

§ 302.101

5 CFR Ch. I (1–1–03 Edition)

Subpart E—Appeals

302.501 Entitlement.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 et seq.

SOURCE: 55 FR 9407, Mar. 14, 1990, unless otherwise noted.

Subpart A—General Provisions

§ 302.101 Positions covered by regulations.

(a) *Positions covered.* With respect to the application of veteran preference, this part applies to each position in the Executive Branch of the Federal Government that is not in the competitive service and that is subject to the provisions of title 5, United States Code, or subject to a statutory requirement to follow the veteran preference provisions of title 5. With respect to restoration rights that are due to compensable injury and appeals therefrom, this part applies to those positions covered by 5 U.S.C. 8101(1) that are not in the competitive service.

(b) *Positions not covered.* This part does not apply to a position or appointment that is required by the Congress to be confirmed by, or made with the advice and consent of, the Senate.

(c) *Positions exempt from appointment procedures.* In view of the circumstances and conditions surrounding employment in the following classes of positions, an agency is not required to apply the appointment procedures of this part to them, but each agency shall follow the principle of veteran preference as far as administratively feasible and, on the request of a qualified and available preference eligible, shall furnish him/her with the reasons for his/her nonselection. Also, the exemption from the appointment procedures of this part does not relieve agencies of their obligation to accord persons entitled to priority consideration (see § 302.103) their rights under 5 U.S.C. 8151:

(1) Positions filled by persons appointed without pay or at pay of \$1 a year;

(2) Positions outside the continental United States and outside the State of

Hawaii and the Commonwealth of Puerto Rico when filled by persons resident in the locality, and positions in the State of Hawaii and the Commonwealth of Puerto Rico when paid in accordance with prevailing wage rates;

(3) Positions which the exigencies of the national defense program demand be filled immediately before lists of qualified applicants can be established or used, but appointments to these positions shall be temporary appointments not to exceed 1 year which may be renewed for 1 additional year at the discretion of the agency;

(4) Positions filled by appointees serving on an irregular or occasional basis whose hours or days of work are not based on a prearranged schedule and who are paid only for the time when actually employed or for services actually performed;

(5) Positions paid on a fee basis;

(6) Positions included in Schedule A (see subpart C of part 213 of this chapter) and similar types of positions when OPM agrees with the agency that the positions should be included hereunder;

(7) Positions included in Schedule C (see subpart C of part 213 of this chapter) and positions excepted by statute which are of a confidential, policy-making, or policy-advocating nature;

(8) Student Trainee positions when filled under Schedule B (see subpart C of part 213 of this chapter);

(9) Attorney positions; and

(10) Positions filled by reemployment of an individual in the same agency and commuting area, at the same or lower grade, and under the same appointing authority as the position last held; *Provided That*, there are no candidates eligible for the position on the agency's priority reemployment list established in accordance with § 302.303.

(11) Positions for which a critical hiring need exists when filled under § 213.3102(i)(2) of this chapter.

[55 FR 9407, Mar. 14, 1990, as amended at 58 FR 58260, Nov. 1, 1993; 60 FR 10006, Feb. 23, 1995]

§ 302.102 Method of filling positions and status of incumbent.

(a) To the extent permitted by statute and this chapter, each appointment, position change, and removal in

the excepted service shall be made in accordance with any regulations or practices that the head of the agency concerned finds necessary.

(b) Except as authorized under paragraph (c) of this section, a person appointed to an excepted position does not acquire a competitive status by reason of the appointment. When an employee serving under a non-temporary appointment in the competitive service is selected for an excepted appointment, the agency must—

(1) Inform the employee that, because the position is in the excepted service, it may not be filled by a competitive appointment, and that acceptance of the proposed appointment will take him/her out of the competitive service while he/she occupies the position; and

(2) Obtain from the employee a written statement that he/she understands he/she is leaving the competitive service voluntarily to accept an appointment in the excepted service.

(c) Upon a finding by OPM that in a particular situation the action will be in the interest of good administration, OPM may authorize an agency to make appointments to specified positions in the excepted service in the same manner as to positions in the competitive service. Persons given career-conditional or career appointments pursuant to a specific authorization by OPM under this paragraph may acquire a competitive status as provided in part 315 of this chapter.

[55 FR 9407, Mar. 14, 1990, as amended at 58 FR 58261, Nov. 1, 1993]

§ 302.103 Definitions.

Person entitled to priority consideration means a person who was furloughed or separated without misconduct, from a position without time limit, because of a compensable injury and whose recovery takes longer than 1 year from the date compensation began. To be eligible under this part the person must apply for reappointment to his or her former agency within 30 days of the date of cessation of compensation.

§ 302.104 Applicability of regulations to applicants and employees.

Each agency shall follow the provisions of this part relating to examination, rating, and selection for appoint-

ment of an applicant when a qualified preference eligible or person entitled to priority consideration applies for appointment to a position covered by this part. Each agency, in its discretion, may follow these provisions when no preference eligible or person entitled to priority consideration applies.

§ 302.105 Special agency plans.

An agency having a position subject to this part may establish a system which will result in granting to eligible persons the preference or priority consideration referred to in sections 1302(c) or 8151 of title 5, United States Code, but which does not conform to all the procedural requirements set forth in this part. The agency establishing such a system must ensure that all eligible applicants entitled to veteran preference or priority consideration receive at least as much advantage in referral as they would receive under the procedures set forth in this part.

§ 302.106 Vacancy announcements.

When an agency announces a vacancy in the excepted service, the announcement must contain a reasonable accommodation statement that complies with requirements in § 330.707 of subpart G of this chapter.

[66 FR 63906, Dec. 11, 2001]

Subpart B—Eligibility Standards

§ 302.201 Persons entitled to veteran preference.

In actions subject to this part, each agency shall grant veteran preference as follows:

(a) When numerical scores are used in the evaluation and referral, the agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(b) When eligible candidates are referred without ranking, the agency shall note preference as “CP” for preference eligibles under 5 U.S.C. 2108(3)(C), as “XP” for preference eligibles under 5 U.S.C. 2108(3) (D) through